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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 427 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GRINDLY GASES & PETROCHEMICALSPRIVATE LIMITED

Versus

SANGHVI OXYFLAME PVT.LTD.

Appearance:

1. Appeal from Order No. 427 of 1996

MR BM MANGUKIYA for Petitioner No. 1

..... for Petitioner No. 2

MR PV HATHI for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/10/2001

ORAL JUDGEMENT

Last time i.e. on 9.10.2001 this appeal from order was adjourned today by brief reasoned order on the

statement made by the learned counsel for the parties with a view to obtain definite instructions from the client. However, today learned counsel Shri Mangukiya for the appellants stated at the Bar that he could not contact his client, therefore, instead of making the statement in the matter he requested the court to pass appropriate order in the matter to which Mr.Hathi for the respondent has no objection.

Present appeal is arising out of the impugned order passed below Ex.5 whereby the learned trial judge partly allowed application Ex.5 to the extend that the plaintiff was ordered to give solvency surety of Rs.7,00,000/= in the form of bank guarantee failing which the defendant was allowed to attach the properties of the defendant. The said order has been stayed since 5.10.1996 on Civil Application No.7482/96 filed in this appeal.

It was submitted by Mr.Mangukiya, learned counsel for the appellant that on failure of the appellants to furnish the bank guarantee of Rs.7,00,000/= some of the properties were already attached by the defendants after making statement before this court that they will not attach. However, thereafter the attachment of remaining property was stayed by this court and the properties which were already attached were ordered to be released by mandatory order.

However, learned counsel Shri Hathi for the respondents stated at the Bar that the appellants-defendants may undertake not to transfer or alienate their properties till the final disposal of the suit and the trial court be directed to dispose of the suit as expeditiously as possible with that undertaking to continue till the final disposal of the suit.

Considering the peculiar facts and circumstances of the case and in absence of any definite instruction from the appellants, learned counsel Shri Mangukiya left it to the court to pass appropriate order.

Considering the peculiar facts and circumstances of the case, I am of the considered opinion that without going into the legality and validity of the impugned order passed by the trial court below Ex.5 this appeal can be disposed of by directing the trial court to decide the Special Civil Suit No.46/96 as early as possible.

Accordingly, this appeal is dismissed without going into legality and validity of the impugned order

passed by the trial court with a direction to the trial court to decide the Special Civil Suit No.46/96 as early as possible and not later than 31.12.2002. Till then the appellant-defendant shall not transfer or alienate their properties by way of sale, transfer, mortgage or alienate to anyone till final disposal of the suit. Parties shall fully cooperate with the suit.

(B.J.Shethna, J.)
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